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JAN 23 2008

**OFFICE OF PETITIONS**

In re Application of	:	
Engelhardt, et al.	:	
Application No. 10/713,183	:	DECISION ON PETITION
Filed: November 14, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. Enz-52 (D2) (c) (D1)	:	

This is a decision on the petition under 37 CFR § 1.78(a)(3), filed December 8, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for benefit of priority to the prior-filed applications set forth in the concurrently filed amendment.

The petition is **DISMISSED AS MOOT.**

The petition is accompanied by an amendment to the first sentence of the specification following the title to include a reference to the prior-filed applications. While a reference to the prior-filed nonprovisional applications was not included in an Application Data Sheet (ADS) or in the first sentence of the specification following the title as required by the rules, a reference, nevertheless, was made elsewhere in the original disclosure filed November 13, 2003.

Where a claim for priority under 37 CFR § 1.78(a)(3) is not included in the first sentence of the specification or in an ADS but does appear elsewhere in the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR § 1.78(a)(2)(ii). Further to this point, Section 201.11(III)(D) of the Manual of Patent Examining Procedure states, in pertinent part, that:

If an applicant includes a benefit claim in the application but not in the manner specified by 37 CFR 1.78(a) (e.g., if the claim is included in an oath or declaration or the application transmittal letter) within the time period set forth in 37 CFR 1.78(a), the Office will not require a petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) to correct the claim if the information concerning the claim was recognized by the Office as shown by its inclusion on the filing receipt.

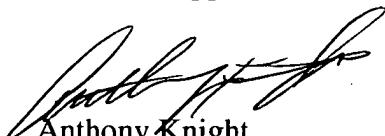
On the other hand, if the USPTO does not note the claim for priority to the prior-filed applications, a petition will be required to accept a late claim for priority under 37 CFR §

1.78(a)(3).<sup>1</sup> In the present case, the Office noted the claim for priority to the prior-filed applications filed with the application, as shown by their inclusion on the filing receipt.

In view of the above, the \$1,370.00 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to Kenya A. McLaughlin at (571) 272-3222. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1634 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.



Anthony Knight  
Supervisor  
Office of Petitions

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<sup>1</sup> Note MPEP 201.11 (III)(D) and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.